

ORIGINAL



0000091465

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2008 DEC -3 P 1:47

AZ CORP COMMISSION  
DOCKET CONTROL

MIKE GLEASON  
CHAIRMAN  
WILLIAM A. MUNDELL  
COMMISSIONER  
JEFF HATCH-MILLER  
COMMISSIONER  
KRISTIN K. MAYES  
COMMISSIONER  
GARY PIERCE  
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF  
THE RESIDENTIAL UTILITY CONSUMER  
OFFICE, TO REVIEW A DETERMINATION  
OBTAINED BY THE GOLD CANYON  
SEWER COMPANY FOR INCREASES IN  
ITS RATES AND CHARGES FOR UTILITY  
SERVICE BASED THEREON.

Docket No. SW-02519A-06-0015

Arizona Corporation Commission

**DOCKETED**

DEC - 3 2008

DOCKETED BY

**RESPONSE TO GOLD CANYON'S NOTICE OF FILING AND MOTION TO DISSAPPROVE  
GOLD CANYON'S PROPOSED REVISED RATES AND CHARGES  
(ORAL ARGUMENT REQUESTED)**

The Residential Utility Consumer Office ("RUCO"), requests the Arizona Corporation Commission ("Commission") disapprove Gold Canyon Sewer Company's ("Company") proposed rates and charges as set forth in the Company's Notice of Filing docketed with the Commission on November 28, 2008.

In Decision No. 70624, the Commission required the Company to submit for approval, by November 30, 2008, rates and charges revised per the Commission's decision to reduce the Company's rate base by \$1.0 million and to adopt a hypothetical capital structure of 40 percent debt and 60 percent equity. In its post-decision filing the Company reduced the rate

1 base by \$1.0 million but failed to account for interest synchronization in its revised rates and  
2 charges. The Decision adopts RUCO's recommendations regarding the hypothetical capital  
3 structure which the Decision determined "...results in just and reasonable rates and charges  
4 for Gold Canyon based on the record of the proceeding." RUCO's recommendation's included  
5 reconciling the effects of hypothetical debt in the Company's rates. Specifically, a hypothetical  
6 capital structure with a debt component will result in an interest expense which lowers the  
7 Company's income tax. This of course is the main benefit to ratepayers of a hypothetical  
8 capital structure and is clearly what the Commission intended in Decision No. 70624.

9 The Commission specifically said it is adopting RUCO's recommendation on the  
10 hypothetical capital structure. Decision No. 70624 at 14. RUCO's recommendation included  
11 the effects of interest and income tax expense. The Company, in response, filed voluminous  
12 testimony explaining why it believed the effects of hypothetical debt were unfair to the  
13 Company. The Company's arguments were rejected and now the Company, through the back  
14 door, is attempting to take away from ratepayers what the Commission so clearly awarded to  
15 them.

16 Should there be any question, Commissioner Pierce was clear when he noted at the open  
17 meeting:

18 "I agree with RUCO that the adoption of the hypothetical capital structure is  
19 appropriate in this case in light of the company's 100 percent capital structure.  
20 The adoption of RUCO's proposed capital structure more holistically addresses  
the concern that the company's overly capitalized capital structure is not in the  
best interest of its customers.

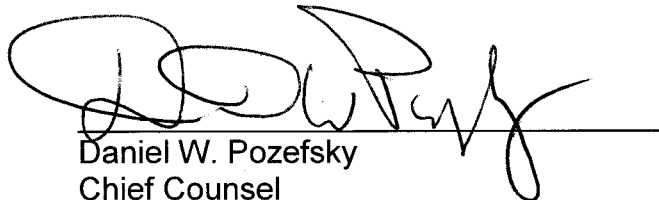
21 If a company has too much equity in its capital structure, it harms ratepayers in  
22 two ways. First, it raises the cost of capital because equity is generally more  
expensive than debt. And, second, it deprives the company of favorable tax  
implications of having debt, which ultimately inures to the benefit of the  
ratepayers." Open Meeting Transcript at 185-186 attached hereto.

1 There is no doubt that Decision No. 70624 required that the interest synchronization be  
2 considered in the Company's rates.

3 **CONCLUSION**

4 It is unfortunate that this Company would make a filing that excludes the benefits to  
5 ratepayers that the Commission so clearly intended when it approved the hypothetical capital  
6 structure. Even with the hypothetical capital structure and interest synchronization, the  
7 ratepayers will still experience a substantial increase in their sewer rates. The Commission  
8 should disapprove the Company's filing and require the Company to submit revised rates and  
9 charges consistent with Decision No. 70624.

10 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of December, 2008.

11   
12  
13 Daniel W. Pozefsky  
14 Chief Counsel

15 AN ORIGINAL AND THIRTEEN COPIES  
16 of the foregoing filed this 3<sup>rd</sup> day  
17 of December, 2008 with:

18 Docket Control  
19 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

20 COPIES of the foregoing hand delivered/  
21 mailed this 3<sup>rd</sup> day of December, 2008 to:

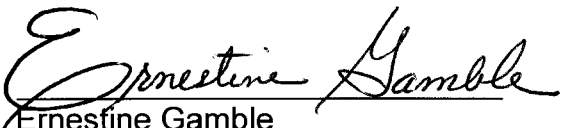
22 Dwight Nodes  
23 Asst. Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission

Janice Alward, Chief Counsel  
Legal Division  
Arizona Corporation Commission

1 Ernest Johnson, Director  
Utilities Division  
2 Arizona Corporation Commission  
3 Jay L. Shapiro  
Fennemore Craig, P.C.  
4 3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
5  
6 Greg Sorenson  
Gold Canyon Sewer Company  
12725 W. Indian School Road  
7 Suite D-101  
Avondale, AZ 85323  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Andy Kurtz  
Mountainbrook Village at Gold Canyon  
Ranch Association  
5674 S. Marble Drive  
Gold Canyon, AZ 85218

Mark A. Tucker, Attorney At Law  
Mark A. Tucker, P.C.  
2650 E. Southern Avenue  
Mesa, AZ 85204

By:   
Ernestine Gamble

# ATTACHMENT

Open Meeting Transcript at 185-186

(Gold Canyon Sewer/Rates/Rehearing 11/13/2008  
SW-02519A-06-0015)

1 MR. IGWE: Mr. Chairman, Commissioners,  
2 Alexander Igwe, Commission Staff, not the litigation  
3 Staff. I am here in an advisory position.

4 If the Commission were to adopt Mayes 2, it  
5 reduces the rate of return from 9.2 to 8.54. And the  
6 decrease is approximately \$400,000, which translates to  
7 about \$6.

8 COM. MAYES: Okay. Thank you, Mr. Igwe. That's  
9 what I had stated earlier, so appreciate that.

10 And that's essentially the impact of Mayes No. 2  
11 on rates. And I think we have gone through the  
12 arguments on it. So I offer that, Mr. Chairman.

13 CHMN. GLEASON: Okay. The board is clear. A  
14 roll call vote on Mayes No. 2. Please call the roll.

15 SECRETARY HOGAN: Commissioner Pierce.

16 COM. PIERCE: Yes, if I might. I agree with  
17 RUCO that the adoption of the hypothetical capital  
18 structure is appropriate in this case in light of the  
19 company's 100 percent capital structure. The adoption  
20 of RUCO's proposed capital structure more holistically  
21 addresses the concern that the company's overly  
22 capitalized capital structure is not in the best  
23 interest of its customers.

24 If a company has too much equity in its capital  
25 structure, it harms ratepayers in two ways. First, it

1 raises the cost of capital because equity is generally  
2 more expensive than debt. And, second, it deprives the  
3 company of favorable tax implications of having debt,  
4 which ultimately inures to the benefit of the  
5 ratepayers.

6 In this case Staff proposed the Hamada  
7 adjustments and, while responding to the first concern,  
8 to the first concern, leaves a second category of harm  
9 to the ratepayers unaddressed. In contrast RUCO's  
10 proposed capital structure addresses both concerns, the  
11 artificially high cost of capital and the loss of  
12 favorable tax treatment. Therefore, I will vote aye on  
13 this amendment.

14 SECRETARY HOGAN: Commissioner Mayes.

15 COM. MAYES: Aye.

16 CHMN. GLEASON: Commissioner Hatch-Miller.

17 COM. HATCH-MILLER: Well, the assumption that  
18 this amendment takes away the previous adjustment for  
19 the Hamada, under Hamada, and imposes a new form of  
20 reduction using a hypothetical capital structure, under  
21 that assumption, I vote aye.

22 SECRETARY HOGAN: Commissioner Mundell.

23 COM. MUNDELL: Aye.

24 SECRETARY HOGAN: Chairman Gleason.

25 CHMN. GLEASON: I think Judge Nodes had it